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Report of the Secretary-General on the implementation of the decision of the Council in 2017 relating to the summary report of the Chair of the Legal and Technical Commission

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Report of the Secretary-General

I. Background

1. At its 230th meeting, on 14 August 2017, the Council adopted a decision relating to the report of the Chair of the Legal and Technical Commission on the work of the Commission during the twenty-third session (ISBA/23/C/18). In paragraph 20 of that decision, the Council requested the Secretary-General to provide it with an update on the implementation of the decision at the twenty-fourth session and that such an annual update remain a standing item on the agenda of the Council. The present report responds to that request by providing an interim update on the implementation of the decision of the Council as of January 2018. A supplementary report will be presented during the second part of the session of the Council, in July 2018.

II. Work on draft exploitation regulations and priority deliverables for the development of the exploitation code

2. The Council welcomed the development of a single set of draft exploitation regulations and requested that work on the regulations continue as a matter of priority. The Council also requested that the Commission's recommendations regarding the consolidated regulations, which were issued by the secretariat in August 2017 (ISBA/23/LTC/CRP.3*), and the next iteration of the draft regulations be circulated sufficiently in advance of the meetings of the Council in March 2018 to allow for in-depth consideration and discussion, and emphasized the need for openness and

* ISBA/24/C/L.1.

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transparency. Relevant developments since the twenty-third session are described below.

A. Submission by stakeholders and the draft regulations

3. Immediately following the twenty-third session, on 25 August 2017, the secretariat issued a note on the consolidated regulations mentioned in paragraph 2 above, along with a list of related questions for comment by stakeholders (ISBA/23/C/12). As at 8 January 2018, the secretariat had received 52 written submissions from stakeholders, which have been posted on the Authority's website. Those submissions will be analysed by the secretariat with a view to preparing a summary report to assist the Council and the Commission.

4. A workshop will be held in London on 12 and 13 February 2018, to be jointly hosted by the Royal Society and the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland, with the objective of stimulating informal discussion among members of the Council and the Commission and experts on key policy, legal and institutional issues that need to be addressed in the development of the exploitation regulations. The outcomes of the workshop will be made available to the Council.

B. Progress made related to the priority deliverables

5. Members of the Council will recall that a workshop was held in Singapore in April 2017 with the objective of discussing a possible financial model for the exploitation of polymetallic nodules. That was the third in a series of independent workshops on a payment regime for deep seabed mining.[1] The final reports of those workshops have been considered by the Commission.

6. Following discussion in the Commission concerning the need for an independent financial model, the secretariat engaged the Massachusetts Institute of Technology to build such a model and test the underlying assumptions put forth during the payment regime workshops. As agreed, the Secretary-General requested contractors, on a voluntary basis, to provide a forecast of financial data for that purpose. Several contractors responded to that request. Those data were anonymized and transmitted to experts at the Massachusetts Institute of Technology to assist them in modelling a range of data and payment mechanisms for future consideration by the Commission and the Council. A presentation of the financial model will be made by the Massachusetts Institute of Technology to the Commission on 21 March 2018. Subsequently, a consultation paper will be issued for stakeholder comment.

7. Since September 2017, a legal working group convened by the International Law Research Programme of the Centre for International Governance Innovation in collaboration with the Commonwealth Secretariat and the Authority has been working to explore the core matters that need to be addressed to advance the definition of a liability regime in the Area. A first workshop, hosted by the Commonwealth Secretariat, was convened in September 2017 in London to prepare a workplan for

[1] Deep Seabed Mining Payment Regime Workshop, No. 1, Scripps Institute of Oceanography, University of California, held in La Jolla, United States of America, on 17 and 18 May 2016 (final report available from www.isa.org.jm/files/documents/EN/Pubs/2016/DSM-ConfRep.pdf); Deep Seabed Mining Payment Regime Workshop, No. 2, held in London, on 1 and 2 December 2016 (final report available from www.resolv.org/site-dsm/files/2016/10/DSM-PRW2-Workshop-Summary-FINAL1.pdf); Deep Seabed Mining Payment Regime Workshop, No. 3, held in Singapore, from 19 to 21 April 2017 (final report available from www.isa.org.jm/files/documents/EN/Regs/DraftExpl/DSM-PRW-3.pdf).

conducting research on key questions, including the concept of effective control and its relevance in the context of liability. Six areas were identified: (1) the purpose and scope of the regime; (2) channelling liability/effective control; (3) actionable damage; (4) procedures; (5) standards of liability; and (6) compensation mechanisms. A second workshop will be convened on 8 and 9 February 2018 with the objective of finalizing papers on the identified key questions. That preliminary work is aimed at providing the Authority with a foundational overview of the issues to make progress on the development of the liability regime applicable to the exploitation of minerals in the Area.

III. Development of regional environmental management plans for the Area

8. In paragraph 16 of its decision, the Council encouraged the Secretariat and the Commission to make progress on the development of regional environmental management plans for the Area. The Secretary-General has submitted a separate report on this matter (ISBA/24/C/3).

IV. Activities of contractors

A. Contractor training programmes

9. In paragraph 7 of its decision, the Council acknowledged the implementation of training programmes, including the allocation of new training opportunities. Since the twenty-third session, the following six contractors have provided information concerning 17 new training opportunities: the Federal Institute for Geosciences and Natural Resources (2); the Government of the Republic of Korea (4); Global Sea Mineral Resources NV (5); China Ocean Mineral Resources Research and Development Association (2); Institut français de recherche pour l'exploitation de la mer (2); and the Interoceanmetal Joint Organization (2).

10. Those opportunities have been advertised through the Authority's website and other means, and qualified candidates from developing countries will be selected by the Commission at its meetings in March 2018. Assistance provided by Member States in facilitating the nomination of qualified candidates, especially female candidates, is very helpful in matching at-sea training and internship opportunities with qualified candidates. The nomination of female candidates suitably qualified to apply for those training opportunities is strongly encouraged, given that one of the seven voluntary commitments made by the Authority in 2017 at the United Nations Conference to Support the Implementation of Sustainable Development Goal 14 was to enhance the role of women in marine scientific research through capacity-building.

B. Cases of non-compliance

11. In paragraph 12 of its decision, the Council requested that the Secretariat and/or the Commission provide further details on cases of non-compliance in circumstances in which the relevant contractor has not complied with a specific request in a letter received from the Secretary-General, including details regarding the relevant contractor, details with respect to repeated instances of non-compliance and recommendations to ensure compliance in the future, to enable the Council to discharge its functions under article 162, paragraph 2 of the United Nations Convention on the Law of the Sea of 10 December 1982. A detailed analysis of

compliance by contractors has been prepared for consideration by the Council in March 2018 (ISBA/24/C/4).

V. Implementation of the data management strategy for the Authority

12. In paragraph 17 of its decision, the Council welcomed progress towards the full implementation of the data management strategy of the Authority by the end of October 2018. Since the twenty-third session, the Secretariat has continued to make progress with that project. In particular, a data entry assistant has been hired and all software and hardware necessary to enter into the testing phase of the database have been acquired. A detailed technical report and presentation on the progress made will be provided to the Commission in March 2018.

VI. Supporting the work of the Legal and Technical Commission

13. In paragraph 18 of its decision, the Council requested the Secretary-General to ensure that adequate time and resources continue to be made available to support the work of the Commission, in particular on priority matters.

14. In that regard, the revised schedule of meetings for 2018 and 2019 has maintained the pace of two meetings a year to allow the Commission more time, in recognition of its heavy workload. Efforts will also continue to be made to facilitate the review by the Commission of the annual reports of contractors in a timely and efficient manner.

VII. Recommendations

15. The Council is invited to take note of the present report and to provide such guidance as may be necessary.